

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERNESTO RIVERA,

Petitioner,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Respondent.

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No. 06 Civ. 1354 (RJS) (HBP)
ORDER

RICHARD J. SULLIVAN, District Judge:

Plaintiff Ernesto Rivera commenced this action pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking judicial review of a final decision of the Commissioner of Social Security (the “Commissioner”) denying his application for Disability Insurance Benefits and Supplemental Security Income. Plaintiff’s complaint was filed on February 21, 2006. The case was originally assigned to the Honorable Kenneth M. Karas, District Judge and reassigned to the docket of the undersigned on September 4, 2007.

On January 4, 2008, Defendant filed a motion and Plaintiff filed a cross-motion for judgment on the pleadings pursuant to Federal Rule 12(c) of Civil Procedure. On January 8, 2009, the Court referred this case to Magistrate Judge Henry B. Pitman for a Report and Recommendation (the “Report”).


On June 21, 2010, Judge Pitman issued the Report recommending that Defendant’s motion be denied and Plaintiff’s motion be granted to the extent of remanding the action to the Commissioner “for the limited purpose of developing the record regarding the quantitative results of Plaintiff’s January 26, 2005 pulmonary function test.” (Report at 71.) In the Report, Judge Pitman advised the parties that failure to file timely objections within fourteen days from the date

of the Report would constitute a waiver of those objections. (Report at 75.) *See* 28 U.S.C. § 636(b)(1)(C); Fed R. Civ. P. 72(b). No party has filed objections to the Report, and the time to do so has now expired.

When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record. *See Adeo Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). After conducting a thorough review of the record, the Court finds that Judge Pitman's well-reasoned and persuasive Report is not facially erroneous. Accordingly, the Court adopts the Report in its entirety. For the reasons set forth therein, IT IS HEREBY ORDERED THAT Defendant's motion for judgment on the pleadings is denied and that Plaintiff's motion for judgment on the pleadings is granted to the limited extent of remanding the matter to the Commissioner for further administrative proceedings consistent with Judge Pitman's Report. The Clerk of the Court shall terminate the motions located at Doc. Nos. 12, 14, and 17 and close this case.

SO ORDERED.

Dated: July 20, 2010
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE